

January 6, 2022

Submitted via EPA FOIA online portal

Regional Freedom of Information Officer
U.S. Environmental Protection Agency, Region 4
AFC Building, 61 Forsyth St., S.W., 9th Floor (4PM/IF)
Atlanta, GA 30303-8960

Re: Freedom of Information Act Request Related to the Oak Ridge Reservation in Oak Ridge, Tennessee

Dear Regional Freedom of Information Officer:

Under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as amended, the Southern Environmental Law Center (SELC) requests access to the following documents created, received, or reviewed by Region 4 of the U.S. Environmental Protection Agency (EPA R4) related to the U.S. Department of Energy's (DOE) clean-up efforts at the Oak Ridge Reservation in Oak Ridge, Tennessee. Specifically, we request copies, in electronic format where possible, of the following documents that were created, received, or reviewed by EPA R4 between December 31, 2020 and the date of EPA R4's search for records responsive to this request:

1. All documents, including any factual data discussed, considered, or otherwise before EPA R4, regarding environmental justice communities which may be affected by DOE's proposal to construct and operate the Environmental Management Disposal Facility (EMDF) as part of a Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) remedial action at the Oak Ridge Reservation including all documents detailing those effects.
2. All correspondence between EPA R4 and others regarding environmental justice communities which may be affected by DOE's proposal to construct and operate the EMDF as part of a CERCLA remedial action at the Oak Ridge Reservation.

For the purposes of this request, the term "documents" includes all written, printed, recorded or electronic: materials, communications, correspondence, emails, memoranda, notations, copies, diagrams, charts, maps, photographs, tables, spreadsheets, formulas, directives, observations, impressions, contracts, letters, messages, and mail in the possession or control of EPA R4 or its agents.

Fee Waiver Request

SELC is requesting copies without charge, or at a reduced charge, because reduction or waiver of fees would be in the public interest. A disclosure is in the public interest if: (1) it is likely to contribute significantly to public understanding of the operations or activities of the government, and (2) it is not primarily in the commercial interest of the requester. The public

interest standard of the fee waiver provision of the FOIA should be “liberally construed” in favor of waivers. *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987); *Pederson v. Resolution Trust Corp.*, 847 F. Supp. 851, 855 (D. Colo. 1994); *Etlinger v. FBI*, 596 F. Supp. 867, 872 (D. Mass. 1984). The goal of the statute is to avoid the “roadblocks and technicalities which have been used by various Federal agencies to deny waivers...” *Pederson*, 847 F. Supp. at 855.

In determining whether the first prong of the public interest test is met, four factors are considered. First, the records must “concern the operations or activities of the Federal government.” 43 C.F.R. § 2.48(a)(1). Here, the requested records contain information relevant to a federal agency’s planned construction and operation of a landfill listed on the CERCLA National Priorities List which will discharge wastewater to surface waters designated for recreational use by the general public, including potential environmental justice communities. The subject of the requested records clearly and directly concerns operations or activities of the federal government.

Second, the information contained in the records must be “likely to contribute significantly to public understanding of those operations or activities,” which is judged by whether the records will be “meaningfully informative,” “will contribute to the understanding of a reasonably broad audience of persons interested in the subject,” and “would confirm or clarify data that has been released previously.” *Id.* at § 2.48(a)(2)(i);(iii);(vi). Other factors are “the logical connection between the content of the records and the operations or activities,” and “[h]ow the public’s understanding of the subject in question will be enhanced to a significant extent by the disclosure.” *Id.* at § 2.48(a)(2)(ii);(vii). These records are meaningfully informative of government operations. The requested records are not already in the public domain, and may contain information relevant to the federal government’s analysis of the effect DOE’s proposed EMDF’s construction and operation, including its discharges, will have on public health and the environment, including waste-receiving waterways, their aquatic inhabitants, and the local population who utilizes these waters for fishing. Without these records, members of the public will be deprived of crucial underlying data and information considered by EPA R4 when approving and/or disapproving of DOE’s preferred remedial alternative at the Oak Ridge Reservation.

Additionally, the requestor must explain how their “identity, vocation, qualifications, and expertise” in relation to the requested information will allow them “to disclose the information in a manner that will be informative to the understanding of a reasonably broad audience of persons interested in the subject,” as well as their “ability and intent to disseminate” that information to that audience. *Id.* § 2.48(a)(2)(iv)-(v). SELC is a 501(c)(3) non-profit organization with over thirty years of experience disseminating public information regarding federal regulations and government actions affecting the environment. SELC maintains a website that includes both

general and topic-specific information regarding the matters with which SELC is involved, including matters related to water pollution by federal agencies.¹ Lawyers at SELC are interviewed by or otherwise provide information to the media to explain their work related to water health and its significance.² SELC's website contains documents generated by SELC for the specific purpose of educating the public on particular issues.³ SELC has previously disseminated information about the potential for DOE's proposed EMDF to pollute local waterways.⁴ The cleanup activities proposed by DOE and approved by EPA at the Oak Ridge Reservation are of significant interest across East Tennessee and the United States. A broad audience is interested in the decisions DOE and EPA make regarding the environmental protectiveness of CERCLA cleanup decisions, and how those decisions will impact local waterways and, by turn, the local community. SELC is well-positioned to effectively convey this information to the public.

The second consideration in whether a fee waiver is in the public interest is whether the request is primarily in the commercial interest of the requester. 43 C.F.R. § 2.48(b). As noted above, SELC is a 501(c)(3) non-profit organization dedicated to protecting the environment of the Southeast. It does not have commercial, trade, or profit interests in seeking these disclosures. As SELC does not have any commercial interest in these disclosures, the public interest is clearly greater in magnitude than the commercial interest.

Given SELC's role in disseminating information regarding the effect of federal actions on the health of the environment and local communities, disclosure of the requested materials will clearly benefit the general public through increased knowledge of EPA's oversight of DOE's planned CERCLA remedial action through its proposed landfill in Oak Ridge, Tennessee. The requested disclosures are likely to significantly contribute to public understanding of government operations, and are not primarily in the requester's commercial interest. This request therefore meets the two requirements for a fee waiver, and so a fee waiver should be granted.

¹ See, e.g., <https://www.southernenvironment.org/topic/industrial-chemical-pollution-in-our-water/>; <https://www.southernenvironment.org/news/tva-announces-big-coal-ash-clean-up-after-state-selc-suc/> (June 13, 2019).

² See, e.g., Dulce Torres Guzman, *Memphis City Council debates resolutions to protect aquifer*, Tennessee Lookout (Aug. 18, 2021), <https://tennesseelookout.com/2021/08/18/memphis-city-council-debates-resolutions-to-protect-aquifer/>; Travis Loller, *Controversial mining operation ignoring orders to halt*, AP News (May 5, 2021), <https://apnews.com/article/business-environment-and-nature-643c0028d1c6e29c26c5a3fac396ba60>.

³ See e.g., <https://www.southernenvironment.org/news/doe-needs-to-rethink-problematic-landfill-proposed-for-nuclear-superfund-site/>.

⁴ *Id.*

FOIA requires a responding agency to make a “determination” on any request within twenty (20) working days of receipt. *See* 5 U.S.C. § 552(a)(6)(A)(i). The statute favors disclosure of records and instructs the agency to withhold information only in narrowly defined circumstances in which the agency can articulate a reasonably foreseeable harm protected by an exemption. *See id.* at § 552(a)(8)(A)(i). FOIA also requires the release of all reasonably segregable portions of a document that are themselves not exempt. *See id.* at § 552(b). Should EPA R4 refuse to provide the information requested, EPA R4 must inform SELC of the grounds for its refusal and the specific administrative appeal rights which are available. *See* 5 U.S.C. § 552(a)(6)(A)(i). SELC further requests preparation of a Vaughn index to facilitate evaluation of the completeness of EPA R4’s response. *See Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973) (index should include a detailed justification for claims of exemption, as well as specificity, separation, and indexing of the documents).

Should our request for reduced or waived fees be denied, we are prepared to bear the reasonable duplication and search costs necessary to fulfill this request. However, I request you contact me before processing this request if the fee is expected to be in excess of \$100.00. SELC reserves our right to appeal a fee waiver or reduction denial.

If you have any questions regarding this request, please feel free to contact me at (615) 921-9470 or sbiggs@selctn.org. I appreciate your prompt attention to this matter and look forward to receiving the public records requested.

Sincerely,

s/Stephanie Biggs
Stephanie Biggs
Southern Environmental Law Center
sbiggs@selctn.org